S.B. CIVIL WRIT PETITION NO. 2351/1994

Narsa Ram & Ors. Vs. State of Raj. & Ors.

DATE OF ORDER :: 9.3.2007

HON'BLE MR. GOVIND MATHUR, J.

Mr. P.R. Singh, for the petitioners.
Mr. S.S. Ladrecha, Addl. Govt. Advocate.

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By this writ petition the petitioners have claimed for the grant of semi-permanent status under Rule 3 of the Rajasthan Public Works Department (B & R) including Garden, Irrigation, Water Works & Ayurvedic Departments Work Charged Employees Service Rules, 1964 on completion of two years' of service. According to the petitioners they completed two years' satisfactory services on the dates mentioned in the schedule which is reproduced below but the respondents have not considered their case for the grant of semi-permanent status:

S.No.	S.N.in Annex.1	Name of petitioner	Date of appointment	Completion of two yrs on
1.	11	Raghunath Ram S/o Jagdish Narain Sarswat	1.8.88	1.8.90

2.	24	Pratap Ram	1.3.89	1.3.91
3.	37	Murli Manohar S/o Nar Singh Das.	1.7.89	1.7.91
4.	45	Tulsa Ram S/o Sukha Ram Choudhary	1.9.89	1.9.91
5.	46	Teja Ram S/o Bhana Ram Nai	1.9.89	1.9.91
6.	51	Puna Ram S/o	1.2.90	1.2.92
7.	57	Narsa Ram S/o Anada Ram Choudhary	1.6.90	1.6.92
8.	59	Girdhari Singh S/o Onkar Singh	1.8.90	1.8.92
9.	61	Teja Ram S/o Deva Ram Choudhary	1.8.90	1.8.92
10.	62	Kishan Singh S/o Mangej Singh	1.8.90	1.8.92
11.	63	Jagdish S/o Deep Chand Ozja.	1.9.90	1.9.92

A reply to the writ petition has been filed on behalf of the respondents admitting the position that the petitioners are entitled for the grant of semi-permanent status under the Rules of 1964. However, the same was not allowed to them as there was no cadred post. The stand of the respondents as it is taken in para 4 and 7 of the reply is worth to be noticed as under:

> "4. That in reply to para No.4 of the writ petition, it is stated that the petitioners were

> engaged on daily wages and they are not in regular employment. Such daily rated workers are eligible for status of semi-permanent employee after completing of two years continuous and satisfactory service subject to the sanction of the cadre-strength by the government.
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> 7. That in reply to para No.7 of the writ petition, it is submitted that the petitioners are eligible for status of semi-permanent employees on sanction of cadre-posts by the government. Presently no cadre-posts are available with the respondents."

In view of the reply given by the respondents it is apparent that the semi permanent status was not conferred upon the petitioners on the count that the cadre strength of the posts concerned was not enhanced by the State Government. This Court accordingly by an order dated 17.1.2005 accepted this writ petition by holding that the concept of "cadre" is not at all applicable under the Work-charged Service Rules as the work-charged services are against the planned works. A direction, therefore, was given to the respondents to consider candidature of the petitioners for the purpose of grant of semi permanent status from the date they completed two years of service.

Being aggrieved by the order dated 17.1.2005 the State Government preferred a Special Appeal before the Division Bench of this Court and that too came to be rejected on 25.4.2005 (D.B. Civil Special Appeal No.116/2005). A Special Leave Petition then was preferred by the State Government before the Hon'ble Supreme Court giving challenge to the orders dated 17.1.2005 and 25.4.2005 and that came to be disposed of on 14.7.2006 with directions as follows:

> "At the time of hearing, out attention was drawn to proceeding in Sr.No.F.21/(1)PHE/85 dated 10.3.1995. Unfortunately, the said order was not brought to the notice of the learned Single judge or of the Division Bench at the time of final hearing. The Officer Order dated 10.3.1995, referred to above, is relevant for deciding the question at issue. It is also stated in the counter affidavit that the Proceeding dated 10.3.1995 was not brought to the notice of the High Court. The fact remains that the High Court has decided the matter without reference to the Proceeding dated 10.3.1995. We, therefore, set aside both the orders passed by the learned Single Judge and of the Division Bench of the High Court and remit the matter to the learned Single Judge of the High Court to dispose of the writ petition afresh on merits and in accordance with law after affording opportunity to both parties."

After remittance this case is listed for hearing afresh. In view of the order of the Hon'ble Supreme Court dated

14.7.2006 this Court is required to examine effect of the order dated 10.3.1995 passed by the Secretary to the Government of Rajasthan, Department of Public Health & Engineering.

The State Government by the order aforesaid permitted the Chief Engineer, PHED to confer semi permanent status to the casual workmen who have completed two years or more service on or after 31.3.1994. While approving for grant of semi permanent status to the workmen who have completed two years of service on 31.3.1994 the Government also ordered that such employees shall not be entitled for any arrears of pay. The contention of the counsel for the respondents is that in light of the order dated 10.3.1995 the petitioners on conferment of semi permanent status shall not be entitled for any arrears of pay.

The Government of Rajasthan under the order dated 10.3.1995 approved for grant of semi permanent status to the workmen who have completed two years of service on 31.3.1994 but a right for grant of semi permanent status accrued to the petitioners by the force of sub-rule (i) of Rule 3 of the Rajasthan Public Works Department (B&R) including

Garden, Irrigation, Water Works & Ayurvedic Departments Work Charged Employees Service Rules, 1964 and not by the order sheet dated 10.3.1995. An obligation under the Rules of 1964 is casted to consider the candidature of the casual work charge employee for grant of semi permanent status on completion of two years of satisfactory service. Accordingly, that was required to be given to the petitioner on completion of two years of satisfactory service. The respondents without any just and valid reason did not consider candidature of the petitioners for conferment of semi permanent status on their completion of two years of service. The petitioners because of the delay on the part of the respondents cannot be denied of their statutory right that is of the consideration for grant of semi permanent status and conferment as such if service is found satisfactory. The petitioners are also entitled for getting the wages from the date of their declaration as semi permanent for the reason that during this entire period they were discharging the duties of the post on which they were given semi permanent status in work-charged establishment. The Rules of 1964 were framed by the Governor of Rajasthan while exercising powers under proviso to Article 309 of the Constitution of India, and therefore, whatever right given there

under could have not been curtailed under the administrative instructions given by the Government of Rajasthan. As such the order dated 10.3.1995 cannot prevail over the Rules of 1964.

This petition for writ, therefore, succeeds. The respondents are directed to consider candidature of the petitioners for the purpose of the grant of semi permanent status from the date they have completed two years of service as mentioned in Column 5 of the Schedule referred in para 1, if their services are found satisfactory, semi permanent status be given to them within a period of one month from today from the date they completed two years of services. The petitioners are also declared entitled for all consequential benefits arising out of the directions given above including the arrears of wages. No order as to cost.

(GOVIND MATHUR),J.

J.Goyal